THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

G. D. Morgan, Judge

Appellate Case No. 2024-000727

Letchworth Properties, LLC ..... Appellant,

v.

City of Greer and City of Greer
Board of Zoning Appeals ..... Respondents.

REPLY IN SUPPORT OF APPELLANT'S MOTON TO SUPPLEMENT THE RECORD

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Letchworth Properties, LLC

REPLY IN SUPPORT OF APPELLANT'S
MOTION TO SUPPLEMENT THE RECORD

NOW COMES, Appellant, Letchworth Properties, LLC, by and through counsel, and hereby respectfully submits this Reply to Respondents' Return to Appellant's Motion to Supplement the Record.

PROCEDURE

On September 19, 2025, Appellant filed a Motion to Supplement the Record pursuant to Rule 212, SCACR. On September 29, 2025, Respondents filed a Return to the Motion. Appellant now files this Reply to Respondents' Return.

ARGUMENT

In their Return, Respondents argue Appellant's Motion to Supplement the Record should be denied because there has been no change in the City's position since the Board Hearing regarding Appellant's right to build a fence on its property. As argued in the Motion to Supplement, this assertion does not conform to the facts.

To reiterate, Appellant presented an offer of settlement to Respondents on July 24, 2025, wherein Appellant would replace all sections of nonconforming fencing on its property and a section of fence on neighboring property with fencing entirely on its property in full compliance with the Greer fence code.[1] On August 14, 2025, Respondents summarily rejected the settlement offer, stating they were "not interested other than for your client to remove the non-compliant fencing."[2] When Appellant protested that Respondents had repeatedly represented to the Board and circuit court that Respondents fully support Appellant having a fence, provided it complied

[1] Appellant's Mot. to Supp. Record, Exhibit A.

[2] Appellant's Mot. to Supp. Record, Exhibit B.

with appliable zoning regulations, Respondents asserted "I never said you could build a fence anywhere".[3] As argued below, Respondents conflicting representations constitute a material change of position by Respondents prejudicial to Appellant.

I. THE CITY'S MISREPRESENTATION OF FACT.

Black's Law Dictionary defines misrepresentation as "[a]ny manifestation by words or other conduct by one person to another that, under the circumstances, amounts to an assertion not in accordance with the facts.[4] At the Hearing, the planning director informed the Board of Zoning Appeals ("Board") Appellant had every right to construct a fence, stating "Staff fully supports them having a fence".[5] In their rejection of Appellant's settlement offer, Respondents contend "I never said you could build a fence anywhere".[6]

Even under the most tortured logic, those two statements cannot be reconciled as consistent with each other. The first is a representation by the planning director to the Board of Appellant's right under the Greer zoning code to construct security fencing on its property provided it conformed with fence regulations, the second qualifies that right by implying some undisclosed location on Appellant's property the City deems off limits to even compliant fencing. If that right was to be restricted in location, the City had a duty to make those tribunals aware of such restriction. In fact, no such restriction has been plead or argued by Respondents at any time during this litigation.

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[3] Appellant's Mot. to Supp. Record (Exhibit B).

[4] Black's Law Dictionary, p. 1001.

[5] Record, p. 140, ll. 9-10.

[6] Appellant's Mot. to Supp. Record (Exhibit B).

Appellant believes the omission may have originated from Respondents lack of diligence regarding the zoning enforcement action against Appellant, wherein planning staff failed to determine Appellant's boundary line with CSXT prior to serving notice of the enforcement action and Board Hearing. Had staff performed the requisite due diligence, they would have discovered: (1) the City extended parking past Appellant's property line and onto the CSXT right of way when it built the parking lot in 1987; and (2) Appellant's security fence was located not on Historic Greer Depot property but rather on CSXT right of way to avoid the City's encroachment. Because no effort was made to determine the actual fence location, Respondents addressed the notice of zoning violation to Letchworth Properties, LLC as the "owner or occupier" of the property. Appellant is neither the owner nor occupier of the CSXT right of way.

Once Respondents became aware Appellant's offer of settlement envisioned replacing the noncompliant fence on CSXT right of way with a compliant fence on its own property, the City changed its position dramatically from the purported enforcement of a fence regulation to the outright denial of Appellant's right to construct even compliant fencing on its property. Whether described as an omission, misrepresentation or change of position, the result is the same, the Board and circuit court rendered a decision based on a mistaken impression of the City's willingness to allow fencing on Appellant's property provided only that it complied with the fence code.

When Respondents state in their Return, "Respondents never said Appellant could place fencing 'anywhere'", it goes without saying Appellant does not intend to build a replacement fence anywhere (e.g., the moon) but rather on its own property. So, the question arises, what part of Appellant's property does the City now contend is off limits to a security fence? What are the legal grounds therefor? Whatever those grounds are, they have nothing to do with the fence ordinance which only addresses the type of fence, not where it can be placed on an owner's property. Nor

has counsel been able to discover anything in the Greer zoning code prohibiting fencing on an owner's property in the downtown overlay district.

The City has not been forthcoming with answers to those questions as evidenced by the absence of a response to the following query:

1. Is the City categorically stating it will not grant Letchworth a permit to construct a fence anywhere on its property in the parking lot under any circumstances?
2. Does your client intend to grant Letchworth a permit for a compliant replacement fence on CSXT right of way abutting the parking lot?
3. Does your client intend to grant Letchworth a permit for compliant replacement fencing on its property outside the parking lot?
4. If the City grants my client the right to go forward with fence replacement, how long would it have to complete the project?[7]

Perhaps, Respondents refuse to state their true position to avoid the Court of Appeals scrutinizing the City's negligent encroachment onto CSXT property, an encroachment that effectively forced Appellant to build a section of fence on neighboring property. Or perhaps the City is worried a fence would encroach on parking spaces even though the fence would only take a small portion of the one-half of one parking space abutting the CSXT right of way located on Appellant's property. Or perhaps the City does not want the headache of removing the encroachments it negligently extended onto CSX right of way. We do not know because the City simply will not tell us. The City's refusal to clearly state its position does not exemplify the type of transparency consistent with Respondent's self-serving claim "Respondents did not – in any form change its position regarding Appellant's ability to construct fencing on its property …"

[7] Appellant's Mot. to Supp. Record (Exhibit D).

II. RESPONDENTS' DENIAL OF APPELLANT'S RIGHT TO CONSTRUCT A SECURITY FENCE CONSTITUTES A MATERIAL HARDSHIP UNDER THE 1994 COMPREHENSIVE PLANNING ACT.

Section 6-29-800(A)(2) of the Local Government Comprehensive Planning and Enabling act of 1994 enables the zoning board of appeals to hear and decide an appeal for a variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in "unnecessary hardship".[8] The unnecessary hardship standard is not as demanding as a takings analysis and variance applicants are not required to prove there is no feasible conforming use for the property without the variance in order to show unnecessary hardship."[9] A variance can be allowed on the ground of unnecessary hardship where there is at least proof that a particular property suffers a singular disadvantage through the operation of a zoning regulation.[10] Situations where a literal enforcement of the provisions might result in serious injustice to a particular individual or practical difficulties are sufficient to support a variance.[11]

Respondents baldly assert "Appellant cannot demonstrate hardship" as if the conclusory statement needed no argument in support. Respondents' assertion is consistent with the Board's arbitrary findings of fact and law in denying Appellant a variance which diverge wildly from the actual facts and South Carolina caselaw on point.

The denial of Appellant's right to construct security fencing, especially in the public parking lot abutting the active rail line, constitutes a very real and singular hardship, not of

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[8] S.C. Code Ann. § 6-29-800(A)(2) (Supp. 2024).

[9] Restaurant Row Associates v. Horry County, 335 S.C. 209, 217, 516 S.E.2d 442 (1999).

[10] Stevenson v. Board of Adjustment of City of Charleston, 230 S.C. at 449, 96 S.E.2d at 460.

[11] Id.

Appellant's making, that materially impacts public safety, insurance coverage and liability, any and all of which would unreasonably restrict utilization of the property. A denial of Appellant's right to protect its property and by extension the public in the public parking lot with a replacement fence on its own property is, therefore, an unnecessary hardship, highly material and relevant to this proceeding notwithstanding Respondents' statements to the contrary. If there were ever a question about Appellant's ability to prove a hardship in support of its request for a variance under the 1994 Comprehensive Enabling Act, there should be no such issue now.

III. RULE 210(C) CANNOT BE READ TO ABOLISH RULE 212(B).

Respondents appear to argue Rule 210(c), SCACR somehow nullifies Rule 212(a), SCACR. The latter states: "If anything material to either party is omitted from the record on appeal … the appellate court may direct that the omission … be corrected." Appellate court rules are fact-specific and cannot be read to cancel each other out simply because they differ in applicability.

IV. RESPONDENTS PREJUDICIAL ACTS AND OMISSIONS.

The City of Greer has a remarkable penchant for absolving itself of acts and omissions negatively affecting Appellant, from extending public parking onto CSXT property, failing to erect security fencing between its public parking lot and an active rail line, suborning mass trespass on neighboring private railroad property, waiting two weeks to inform a property owner in downtown Greer its fence was non-conforming, failing to determine whose property the fence was located on, refusing to allow Appellant's objections at the Hearing, late filing of the Boards decision in the circuit court, failing to accept a reasonable, good-faith offer of settlement in full compliance with Greer code of laws and now adopting a position radically different from the position the City represented to the Board and circuit court regarding Appellant's right to construct security fencing on its property.

Contrast such negligent and unreasonable conduct with the actions of the owners of a small, closely-held corporation, who with their own savings transformed a badly deteriorated building in the heart of downtown Greer into a pristine property that enhances the appearance, appeal and tax base of the City and whose only "crime" was hiring a fence contractor who failed to pull permit applications. And for that omission, the City of Greer appears determined to punish the owners by first denying, on highly dubious grounds, a variance for existing fencing and now to deny them the right to even have a security fence on their property.

Respondents successfully moved this court to strike a variety of arguments and facts from the record they did not want this court to hear on the basis they were not raised to the Board at the hearing. The City should not now be allowed to omit from the record a position materially different from what it presented to the Board.

CONCLUSION

For the reasons stated herein and in Appellant's Motion to Supplement the Record, Respondents' misrepresentations have materially prejudiced Appellant's case at all levels of this proceeding. Wherefore, Appellant respectfully moves the Court for leave to supplement the Record with the exhibits attached to Appellant's Motion in the form of an Appendix or, in the alternative, for remand to the circuit court for a hearing in conformance with the true facts of this case.[12]

[12] Appellant requests the Court's permission to include the following exhibits in an Appendix to the Record on Appeal: (1) Appellant's Settlement Offer of July 15, 2025 (Exhibit A to Appellant's Mot. to Supp. the Record); (2) City's Response dated August 14, 2025 (Exhibit B to Appellant's Mot. to Supp. the Record); (3) Appellant's Request for Clarification dated August 15, 2025 (Exhibit C to Appellant's Mot. to Supp. the Record); and (4) Appellant's Second Request for Clarification dated August 26, 2025 (Exhibit D to Appellant's Mot. to Supp. the Record).

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G. D. Morgan, Jr., Circuit Court Judge

Appellate Case No. 2024-000727

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PROOF OF SERVICE

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I, J. Marshall Lawson, do hereby certify that I served Appellant's REPLY IN SUPPORT OF APPELLANT'S MOTION TO SUPPLEMENT THE RECORD on the following counsel of record for Respondents via electronic mail (see attached email) to counsel's AIS E-mail address on October 3, 2025.

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Respectfully submitted,

By: /s/ ***J. Marshall Lawson***
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October 3, 2025

SENT VIA EMAIL: ctappfilings@sccourts.org
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: **REPLY IN SUPPORT OF APPELLANT'S MOTION TO SUPPLEMENT THE RECORD**: Letchworth Properties, LLC v. City of Greer and City Greer Board of Zoning Appeals, Appellate Case No. 2024-000727

Dear Ms. Kitchings:

Attached for filing is Appellant's Reply in Support of Appellant's Motion to Supplement the Record and Proof of Service in the matter referenced above.

Please let me know if you have questions or comments.

Sincerely,

/s/ J. Marshall Lawson

The Lawson Law Firm, LLC

Attachment(s) as stated

cc: Daniel Hughes, Esquire